

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA, )  
                                  )  
                                  )  
Plaintiff,                   )  
                                  )  
v.                             )                           **NO.97-CR-30089-WDS**  
                                  )  
                                  )  
DERRICK MITCHELL,           )  
                                  )  
                                  )  
Defendant.                   )

**MEMORANDUM AND ORDER**

**STIEHL, District Judge:**

This matter is before the Court for docket control. The defendant filed a motion to vacate sentence (Doc. 760), which is, in essence, a collateral attack on his sentence. No matter what the title, if the motion is actually on which seeks review of the sentence, it must be filed as a habeas action pursuant to 28 U.S.C. § 2255. The defendant filed this motion after his second or successive habeas petition had been denied by the Seventh Circuit. *Mitchell v. United States*, 02-CV-906-WDS (See, Doc. 34). In light of the fact that this motion seeks review of his sentence, and he has not received leave to file a second or successive petition, the motion to vacate is **DISMISSED**. *See, Nunez v. United States*, 96 F.3d 990 (7<sup>th</sup> Cir. 1996).

**IT IS SO ORDERED**

**DATE: 17 November, 2010**

**s/ WILLIAM D. STIEHL**  
**DISTRICT JUDGE**